



Family Educational Rights Privacy (FERPA) Act

What is the Family Educational Rights Privacy Act?

The Family Educational Rights and Privacy Act¹ is a federal law that grants parents the right to inspect, review, and challenge the content of their child's education records and, subject to certain exceptions, control the disclosure of education records or personally identifiable information² contained in the records.³ When a student turns 18 years of age, or enters a postsecondary institution at any age, the rights under FERPA transfer from the parents to the student (eligible student).⁴

Educational agencies and institutions⁵ must comply with FERPA as a condition to receiving federal education funds.⁶ An educational agency or institution that receives federal education funds must annually notify parents and eligible students of their rights under FERPA.⁷

The Family Policy Compliance Office (Office) of the U.S. Department of Education is responsible for investigating, processing, and reviewing complaints and violations of FERPA. The Office also provides technical assistance to educational agencies and institutions regarding compliance with FERPA.⁸

How is statewide compliance with FERPA achieved in Florida?

The State Board of Education is responsible for overseeing compliance with FERPA by the Florida Department of Education; school districts; public K-12 schools, centers, or institutions; the Florida School for the Deaf and the Blind; and the Florida Virtual School.⁹ The state board must adopt rules aligning Florida's education records policy to FERPA, monitor changes made

¹ 20 U.S.C. s. 1232g and 34 C.F.R. part 99.

² FERPA defines "personally identifiable information" to include, without limitation, the names of the student and his or her parents or other family members; the address of the student or student's family; the student's social security number, student number, biometric record, or other personal identifier; indirect identifiers, such as the student's date of birth, place of birth, and mother's maiden name; and other information that could reasonably identify a student. 34 C.F.R. s. 99.3 (definition of "personally identifiable information").

³ 20 U.S.C. s. 1232g(a) and (b); 34 C.F.R. part 99. In cases of divorced, separated, or never-married parents, each parent is presumed to have rights under FERPA unless a state statute, court order, or other legally binding document provides to the contrary. 34 C.F.R. s. 99.4.

⁴ 20 U.S.C. s. 1232g(d); 34 C.F.R. ss. 99.3 (definition of "eligible student") and 99.5(a).

⁵ FERPA defines "educational agency or institution" to mean any public or private agency or institution that receives federal education funding. 20 U.S.C. s. 1232g(a)(3). This includes educational institutions that provide instruction or educational services and educational agencies that are authorized to control and direct postsecondary institutions or public elementary or secondary schools, i.e., state and local educational agencies. 34 C.F.R. s. 99.1.

⁶ 20 U.S.C. s. 1232g(a) and (b); 34 C.F.R. s. 99.1.

⁷ 20 U.S.C. s. 1232g(e); 34 C.F.R. s. 99.7(a).

⁸ 34 C.F.R. s. 99.60.

⁹ Section 1002.22(2) and (3), F.S.

to FERPA and its implementing regulations, and advise the Legislature of any amendments to state law that are necessary to maintain compliance with FERPA.¹⁰

In Florida, education records, as defined by FERPA, held by governmental entities are confidential and exempt from public disclosure.¹¹ The state board rule which governs education records generally mirrors the relevant FERPA provisions. Among other things, this rule requires school districts to adopt policies regarding the inspection, review, and disclosure of education records; challenges to the content of education records; and annual notification of parents and eligible students of their rights under FERPA.¹²

Each public postsecondary institution is individually responsible for maintaining its compliance with FERPA.¹³ A student whose rights under FERPA are violated by a public postsecondary institution may seek an injunction in circuit court to remedy the violation. If the student is successful, he or she may be awarded attorney's fees and court costs.¹⁴

Which student records are considered "education records?"

Under FERPA, education records include records, files, documents, and other materials maintained by an educational agency or institution which contain information directly related to a student.¹⁵ FERPA does not list specific examples of items which constitute education records, but instead provides that the following items are not education records:

- ❖ Records made by instructional, supervisory, and administrative personnel which remain in the sole possession of the maker for use as a personal memory aid.
- ❖ Records of the law enforcement unit of an educational agency or institution.
- ❖ Records of educational agency or institution employees that are made in the normal course of business and relate exclusively to employment. This exception does not apply to employees who are also students at the educational agency or institution.

¹⁰ Section 1002.22(3), F.S.

¹¹ Section 1002.22(1), F.S. The state constitution provides broad access to public records held by governmental entities. Public access must be granted to such records, unless specifically exempted by statute or the constitution. Section 24, Art. I of the State Constitution; ch. 119, F.S. Generally, such provisions apply to all executive agencies, counties, municipalities, school districts, and separate units of government established by law. Section 119.011(2), F.S.

¹² Rule 6A-1.0955(6), F.A.C.

¹³ Section 1002.225(2), F.S.

¹⁴ Section 1002.225(3), F.S.

¹⁵ 20 U.S.C. s. 1232g(a)(4)(A); 34 C.F.R. s. 99.3 (definition of "education records"). In Florida, state board rule specifies two categories of information which must be contained in a student's education records. "Category A" information must be permanently maintained in the student's records. Such information includes the student's full legal name; authenticated birth date, place of birth, race, and sex; last known address; parent's or guardian's names; last school attended; attendance records and enrollment and withdrawal dates; courses taken, grades, and other records of achievement; and date of graduation or program completion. Rule 6A-1.0955(2)(a)1., F.A.C. "Category B" information is subject to periodic review and is removed from the student's records when it is no longer useful. Such information includes health information, family background, standardized test scores, educational and career plans, honors and activities, work experience reports, teacher comments, student services reports, correspondence from community agencies or private professionals, driver education certificates, lists of schools attended, and written agreements of corrections, deletions, or expunctions resulting from meetings or hearings to amend educational records. Rule 6A-1.0955(2)(a)2., F.A.C.

- ❖ Records of a student who is 18 years of age or older or who attends a postsecondary institution at any age, that are held by a medical or mental health professional for treatment purposes and disclosed only to persons providing treatment.
- ❖ Records made or received by an educational agency or institution after an individual ceases to be a student that do not directly relate to the individual's capacity as a student.
- ❖ Grades on peer-graded papers before they are collected and recorded by a teacher.¹⁶

Recorded course grades, grade point averages, standardized test scores, attendance records, counseling records, and records of disciplinary actions are examples of items that are commonly considered education records under FERPA.¹⁷

What rights to access education records does FERPA confer on parents and eligible students?

An educational agency or institution must grant parents or eligible students the opportunity to inspect and review the student's education records.¹⁸ An educational agency or institution must comply with a request for access to records within 45 days after receipt of the request.¹⁹ If a parent or eligible student is unable to physically inspect the records, copies of the records or other arrangements must be made to enable inspection. An educational agency or institution must respond to reasonable requests for explanation and interpretation of the records and may not destroy records while a request for inspection is pending.²⁰ For records containing information on more than one student, a parent or eligible student may only access the records to which he or she has a right to inspect.²¹ A postsecondary institution is not required to provide a student with access to education records containing parental financial records or, subject to certain conditions, confidential letters of recommendation relating to the student's admission to a postsecondary institution, application for employment, or honorary recognition.²²

¹⁶ 20 U.S.C. s. 1232g(a)(4)(B); 34 C.F.R. s. 99.3 (definition of "education records").

¹⁷ *Falvo v. Oswasso Independent School District No. I-011*, 534 U.S. 426, 431-436 (2002). In *Falvo*, parents filed suit contending that a teacher's practice of allowing peer-grading of assignments violated FERPA's prohibition against the disclosure of education records without prior parental consent. The U.S. Supreme Court held that peer-graded assignments do not constitute education records under FERPA until a grade is *recorded and maintained* as a record by the classroom teacher. In explaining the distinction between a recorded and an unrecorded grade, Justice Kennedy specifies the above mentioned items as examples of education records under FERPA, i.e., records that are typically *recorded and maintained* by educational agencies and institutions. *Id.* at 431-432; *see also U.S. v. Miami University*, 294 F.3d 797 (6th Cir. 2002)(student disciplinary records maintained by a university are education records under FERPA).

¹⁸ 20 U.S.C. s. 1232g(a)(1)(A) and (B); 34 C.F.R. s. 99.10(a).

¹⁹ 20 U.S.C. s. 1232g(a)(1)(A); 34 C.F.R. s. 99.10(b). Florida's policy on inspection and review of education records is identical to the relevant FERPA provisions, except that a request to inspect and review education records must be complied with within 30 days, rather than 45 days. *See* rule 6A-1.0955(6)(b), F.A.C.

²⁰ 34 C.F.R. s. 99.10(c)-(e). FERPA does not require educational agencies and institutions to provide copies of education records to parents or eligible students unless extenuating factors prevent physical inspection. U.S. Department of Education, Family Education Rights Privacy Act, *General*, <http://www2.ed.gov/policy/gen/guid/fpco/ferpa/index.html> (last visited July 23, 2010). An educational agency or institution may charge a fee for copies of education records so long as the fee does not inhibit a parent or eligible student's right to inspect and review education records. 34 C.F.R. s. 99.11(a).

²¹ 20 U.S.C. s. 1232g(a)(1)(A); 34 C.F.R. s. 99.12(a).

²² 20 U.S.C. s. 1232g(a)(1)(A) and (C); 34 C.F.R. s. 99.12(a) and (b). Access to confidential letters of recommendation made before January 1, 1975, may be withheld as long as the letters are used only for originally intended

What rights to challenge and amend the content of education records does FERPA confer on parents and eligible students?

A parent or eligible student may request that an educational agency or institution amend an education record if he or she believes that the information contained in the record is inaccurate, misleading, or in violation of the student's privacy rights.²³ The educational agency or institution must decide whether to amend the record within a reasonable time after receipt of the request.²⁴ If the educational agency or institution decides not to amend the record, it must inform the parent or eligible student of its decision and of his or her right to request a hearing.²⁵

If requested by a parent or eligible student, an educational agency or institution must provide a hearing to challenge the content of the student's education records.²⁶ If the educational agency or institution decides that the information is inaccurate, misleading, or otherwise in violation of the privacy rights of the student, it must amend the record accordingly and inform the parent or eligible student of the amendment in writing.²⁷ If the educational agency or institution decides not to amend the record, it must inform the parent or eligible student of his or her right to place a statement in the record indicating his or her disagreement with the educational agency or institution's decision. The statement must be maintained with the contested part of the record and disclosed whenever that portion of the record is disclosed by the educational agency or institution.²⁸

How does FERPA protect the privacy of education records?

Subject to several exceptions, FERPA requires educational agencies and institutions to obtain written consent from a parent or eligible student before disclosing education records or personally identifiable information contained therein.²⁹ The written consent must be signed and dated and must:

- ❖ Specify the records that may be disclosed;
- ❖ State the purpose of the disclosure; and
- ❖ Identify the party or class of parties to whom the disclosure may be made.

Educational agencies and institutions must keep records indicating each party which has requested or received access to a student's education records and the party's legitimate interest

purposes. If such a letter was placed in the student's education records after January 1, 1975, access may be withheld if the student has waived his or her right of access and the letters relate to the student's admission to an educational institution, application for employment, or receipt of an honor or honorary recognition. 20 U.S.C. s. 1232g(a)(1)(C); 34 C.F.R. s. 99.12(b).

²³ 20 U.S.C. s. 1232g(a)(2); 34 C.F.R. s. 99.20(a). Florida's policy for challenging the content of education records is similar to the relevant FERPA provisions. The process begins with informal meetings and proceeds to a formal hearing if the matter is not resolved informally. See rule 6A-1.0955(6)(k), F.A.C.

²⁴ 34 C.F.R. s. 99.20(b).

²⁵ 34 C.F.R. s. 99.20(c).

²⁶ 34 C.F.R. s. 99.21(a).

²⁷ 34 C.F.R. s. 99.21(b).

²⁸ 34 C.F.R. s. 99.21(c).

²⁹ 20 U.S.C. s. 1232g(b)(1); 34 C.F.R. ss. 99.30-99.39. Florida's policy for the disclosure of education records is similar to the relevant FERPA provisions. See rule 6A-1.0955(6)(f) and (g), F.A.C.

for such request.³⁰ Parents and eligible students may request copies of any education records disclosed and may inspect records documenting requests for access to, and disclosures of, education records.³¹

An educational agency or institution may only disclose education records on condition that the recipient will not disclose the records to third parties without written consent from the parent or eligible student.³² However, an educational agency or institution may disclose education records with the understanding that the recipient may make subsequent disclosures to third parties on its behalf if the record meets an exception to the consent requirement and records are kept on each disclosure.³³

Under what circumstances does FERPA authorize the disclosure of education records without prior consent?

FERPA authorizes an educational agency or institution to disclose education records or personally identifiable information contained therein without prior consent if the disclosure is:

- ❖ To the parent of a student who is not an eligible student or to an eligible student if he or she is not claimed as a dependent on his or her parent's income taxes.³⁴
- ❖ To other school officials, including teachers, within the agency or institution.³⁵
- ❖ To officials of another school, school system, or institution of postsecondary education where the student seeks or intends to enroll, or where the student is already enrolled so long as the disclosure is related to the student's enrollment or transfer.³⁶
- ❖ To authorized representatives of the U.S. Comptroller General, U.S. Attorney General, U.S. Secretary of Education, or state and local educational authorities for purposes related to audits, evaluations, or enforcement of federal legal requirements.³⁷

³⁰ 20 U.S.C. s. 1232g(b)(4)(A); 34 C.F.R. s. 99.33(a). FERPA does not require an educational agency or institution to keep a record of requests by, or disclosures to, the parent or eligible student, a school official, a party with written consent from the parent or eligible student, a party seeking directory information, or a party seeking or receiving records in accordance with a court order or subpoena. 34 C.F.R. s. 99.32(d).

³¹ 20 U.S.C. s. 1232g(b)(2); 34 C.F.R. ss. 99.30(c) and 99.32(c).

³² 20 U.S.C. s. 1232g(b)(4)(B); 34 C.F.R. s. 99.33(a). This provision does not apply to disclosures of "directory information," information concerning sex offenders for whom registration is required under federal law, or information related to campus crime that is disclosed pursuant to federal law. In addition, this provision does not apply to disclosures made to the parent of a student who is not an eligible student or to an eligible student if he or she is not claimed as a dependent on his or her parent's income taxes; made in compliance with a judicial order or lawfully issued subpoena; made in connection with a disciplinary proceeding at a postsecondary institution; or made to the parents of a postsecondary student regarding an alcohol or drug related violation committed by the student. 34 C.F.R. 99.33(c).

³³ 34 C.F.R. s. 99.32(b)(2); 34 C.F.R. s. 99.33(b).

³⁴ 20 U.S.C. s. 1232g(b)(1)(H); 34 C.F.R. s. 99.31(a)(8) and (12); *see* 26 U.S.C. s. 152 (Internal Revenue Code definition of dependent child).

³⁵ 20 U.S.C. s. 1232g(b)(1)(A); 34 C.F.R. s. 99.31(a)(1). Disclosure to outside contractors, consultants, and others is permitted if they perform a function typically served by employees; are directly controlled by the educational agency or institution; are permitted access only to records in which they have a legitimate educational interest; and are required to comply with FERPA requirements for redisclosure of education records. *Id.*

³⁶ 20 U.S.C. s. 1232g(b)(1)(B); 34 C.F.R. s. 99.31(a)(2).

³⁷ 20 U.S.C. s. 1232g(b)(1)(C) and (3); 34 C.F.R. s. 99.31(a)(3). Authority to conduct an audit, evaluation, or enforcement action must be established under other federal, state, or local authority and controls must be in place to prevent disclosure to unauthorized persons. 34 C.F.R. s. 99.35(a)(2) and (b).

- ❖ In connection with an application for student financial aid to determine eligibility, amount, and terms and conditions for such aid.³⁸
- ❖ Authorized by a state statute concerning the juvenile justice system to enable specified state and local officials to effectively serve a juvenile prior to adjudication.³⁹
- ❖ To organizations conducting studies for, or on behalf of, educational agencies or institutions to develop, validate, or administer predictive tests; administer student aid programs; or improve instruction.⁴⁰
- ❖ To accrediting organizations to carry out their accrediting functions.⁴¹
- ❖ To comply with a judicial order or lawfully issued subpoena.⁴²
- ❖ In connection with a health or safety emergency and disclosure is necessary to protect the health or safety of the student or others.⁴³
- ❖ Of directory information.⁴⁴
- ❖ To the victim of an alleged perpetrator of a violent crime or non-forcible sex offense⁴⁵ which is limited to the final results of a disciplinary proceeding conducted on the matter by a postsecondary institution, regardless of outcome.⁴⁶
- ❖ In connection with a disciplinary proceeding conducted by a postsecondary institution regarding an alleged crime of violence or non-forcible sex offense perpetrated by a student in which the student is determined to have violated the institution's rules or policies.⁴⁷
- ❖ To a parent of a student at a postsecondary institution regarding the student's violation of any Federal, State, or local law or institutional rule or policy governing the use or possession of

³⁸ 20 U.S.C. s. 1232g(b)(1)(D); 34 C.F.R. s. 99.31(a)(4).

³⁹ 20 U.S.C. s. 1232g(b)(1)(E); 34 C.F.R. ss. 99.31(a)(5) and 99.38.

⁴⁰ 20 U.S.C. s. 1232g(b)(1)(F); 34 C.F.R. s. 99.31(a)(6)(i). Disclosure is only permitted if the educational agency or institution and organization conducting the study enter into a written agreement which specifies the purpose, scope and duration of the study; prohibits personal identification of parents and students to third parties; and requires the destruction of personally identifiable information of parents and students upon completion of the study. 34 C.F.R. s. 99.31(a)(6)(ii).

⁴¹ 20 U.S.C. s. 1232g(b)(1)(G); 34 C.F.R. s. 99.31(a)(7).

⁴² 20 U.S.C. s. 1232g(b)(1)(J); 34 C.F.R. s. 99.31(a)(9). The educational agency or institution must make a reasonable effort to notify the parent or eligible student of the order or subpoena in advance of compliance, so that the parent or eligible student may seek protective action. Notification is not required if the disclosure is in compliance with an ex parte court order obtained by the United States Attorney concerning investigations or prosecutions of terrorism or with a federal grand jury or other law enforcement subpoena in which the court or issuing agency has ordered that information in the subpoena not be disclosed. *Id.*

⁴³ 20 U.S.C. s. 1232g(b)(1)(I); 34 C.F.R. ss. 99.31(a)(10) and 99.36(a).

⁴⁴ 20 U.S.C. s. 1232g(a)(5); 34 C.F.R. s. 99.31(a)(11). FERPA defines directory information as “the student’s name, address, telephone listing, date and place of birth, major field of study, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees and awards received, and the most recent previous educational agency or institution attended by the student. 34 C.F.R. s. 99.3 (definition of “directory information”). An educational agency or institution must give annual public notice of all directory information it releases without consent and allow a reasonable opportunity for parents or eligible students to object to such release. 20 U.S.C. s. 1232g(a)(5).

⁴⁵ For purposes of FERPA, an “alleged perpetrator” means another student at the postsecondary institution. Crimes of violence include arson, assault, burglary, criminal homicide, destruction of property, vandalism, kidnapping, robbery, and forcible sex offenses. Non-forcible sex offenses include acts committed by a student which constitute statutory rape or incest. 34 C.F.R. s. 99.39.

⁴⁶ 20 U.S.C. s. 1232g(b)(6)(A); 34 C.F.R. s. 99.31(a)(13).

⁴⁷ 20 U.S.C. s. 1232g(b)(6)(B); 34 C.F.R. s. 99.31(a)(14). The institution may not disclose the name of any other student, including a victim or witness, without the prior written consent of the other student. This provision pertains only to disciplinary proceedings concluded on or after Oct. 7, 1998. *Id.*

alcohol or controlled substances if the student is under 21 years of age and the institution determines that the student committed the violation.⁴⁸

- ❖ Regarding sex offenders and other individuals who are required to register with law enforcement under federal law.⁴⁹

In addition, an educational agency or institution or recipient of education records may release education records without prior consent if all personally identifiable information is removed from the records and the agency, institution, or party reasonably determines that the student's identity cannot be ascertained from the records.⁵⁰

Where can I get additional information?

Florida Department of Education

Bureau of Exceptional Education and Student Services
(850) 245-0475
<http://www.fldoe.org/ese/default.asp>

U.S. Department of Education

Family Policy Compliance Office
(800) 872-5327
<http://www2.ed.gov/policy/gen/guid/fpc/index.html>

Florida House of Representatives

Education Committee
(850) 488-7451
<http://www.myfloridahouse.gov>

⁴⁸ 20 U.S.C. s. 1232g(i); 34 C.F.R. s. 99.31(a)(15).

⁴⁹ 20 U.S.C. s. 1232g(b)(7)(A); 34 C.F.R. s. 99.31(a)(16); *see* 42 U.S.C. s. 14071 (federal requirements for sexual offender registration).

⁵⁰ 34 C.F.R. s. 99.31(b)(1).

